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CV 14

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U.S. DISTRICT COURT
EASTERN DISTRICT
OF NEW YORK

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

GARAUFIS, J.
LEVY, M.J.

HALF BROTHERS LLC

Plaintiff,

v.

JOEL WERTZBERGER, and
ARON J. WOLCOWITZ, a/k/a JACK WOLCOWITZ

Defendants.

Docket No.

COMPLAINT

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff, HALF BROTHERS LLC., a Washington Limited Liability Company ("Plaintiff"), by and through its undersigned counsel, hereby complains of defendants, JOEL WERTZBERGER and ARON J. WOLCOWITZ (collectively, "Defendants") as follows:

INTRODUCTION AND FACTUAL BACKGROUND

1. This case concerns the non-payment of commissions of \$500,000 earned by the Plaintiff's assignor, Opulen Ventures, Inc. ("Opulen"), pursuant to an agreement entered into by

Opulen and Axxessa, LLC ("Axxessa") on January 4, 2012.

2. Pursuant to the agreement, Axxessa was required to pay Opulen commissions in the amount of \$500,000 by February 5, 2012.

3. Axxessa failed and refused to pay the amount due to Opulen, and Opulen commenced an action in the Eastern District of New York against Axxessa, 12-cv-01776 (RRM) (RER).

4. Opulen obtained a judgment by default against Axxessa, entered by this Court on March 7, 2013 in the amount of \$565,742.89, plus post judgment interest pursuant to 28 U.S.C. § 1961 (the "Judgment against Axxessa").

5. Meanwhile, Axxessa, controlled by each of the defendants Joel Wertzberger and Aron J. Wolcowitz,, jointly and severally, caused and directed Axxessa to pay sums to other entities in which, upon information and belief, they were involved and controlled, and to pay for non-business expenses, thereby abusing the separate entity status of Axxessa and rendering it equitable for this Court to make each of the individual defendants personally liable for the debts of Axxessa.

6. In December 2013, Opulen assigned the Judgment to Plaintiff.

PARTIES

7. Plaintiff, at all times material hereto, was and continues to be a limited liability company formed under the laws of the State of Washington, having its principal place of business in Kirkland, Washington.

8. Upon information and belief, defendant Joel Wertzberger ("Wertzberger") is a citizen and resident of the State of New York.

9. Upon information and belief, defendant Aron J. Wolcowitz, a/k/a Jack Wolcowitz ("Wolcowitz"), is a citizen and resident of the State of New York.

JURISDICTION AND VENUE

10. This Court has jurisdiction over this matter pursuant to 28 U.S.C. Section 1332, in that there is complete diversity of citizenship between the parties and the amount in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs.

11. Venue is proper herein pursuant to 28 U.S.C. Section 1391(b)(1) in that the defendant resides/has a place of business in the Eastern District of New York.

AS AND FOR A FIRST CAUSE OF ACTION

12. Plaintiff repeats and realleges each and every allegation stated in the foregoing paragraphs of this Complaint as if stated herein at length.

13. In or about November/December 2011, Axcessa opened a business and checking account with Investors Bank, using the address 1166 59th Street, Brooklyn, New York 11219.

14. The principals of Axcessa were identified as Joel Werzberger with a home address of 1166 59th Street, Brooklyn, New York 11219 and Aron Wolcowitz, with a home address of 28 East 5th Street, Apt. 2R, Brooklyn, New York 11230.

15. Upon information and belief, the authorized Axcessa account signatories for Axcessa's Investors Bank accounts were Joel Werzberger [sic] and Aron J. Wolcowitz.

16. Upon information and belief, upon applying for a tax identification number for Axcessa, Joel Wertzberger advised the Internal Revenue Service he was the sole member of Axcessa.

17. Each of Wertzberger and Wolcowitz dominated and controlled Axcessa.

18. Upon information and belief, each of Wertzberger and Wolcolwitz used Axcessa for personal and non-business purposes.

19. Upon information and belief, each of Wertzberger and Wolcowitz caused Axcessa's bank account at Investors Bank to pay personal and non-business expenses, including but

not limited to the following on or about the dates set forth:

- (a) Olympic Fence – 11/30/11 - \$800
- (b) Congregation Nitei Gavriel – 12/15/11 - \$1,800
- (c) Talmu Inc. - 12/19/11 - \$50,000 Olympic Fence – 12/19/11 - \$780
- (d) National Prestige Homes – 1/12/12 - \$2,169.42
- (e) Yeshiva Bes Hilel Krasna – 1/3/12 - \$180
- (f) File Right – 1/19/12 - \$400
- (g) Quality Exterminating – 2/14/12 - \$653.26
- (h) Mega 53 – 3/23/12 - \$2,500
- (i) Congregation Ichud Chasidim – 3/27/12 - \$900
- (j) Talmu Inc. – 5/22/12 - \$25,000
- (k) Mega 53 – 6/5/12 - \$1,800
- (l) Guaranteed Subpoena Service – undated; negotiated 6/14/12 - \$294.90
- (m) Chaeirim – 8/2/12 - \$500
- (n) Mega 53 – 8/22/12 - \$2,042
- (o) J&L Landscaping – 9/3/12 - \$32.66
- (p) Able Sewer – 9/13/12 - \$136.10
- (q) Quality Exterminating – 9/13/12 - \$81.66
- (r) Shomrei Haddas Chappels – 9/19/12 - \$4,894
- (s) Cong. Minchas Chinuch – 4/23/12 - \$360
- (t) Rabbi Shteisel – 9/24/12 - \$175
- (u) Homebodies – 10/23/12 – 1,500
- (v) Boro Rug – 11/7/12 - \$924.43

- (w) Joyland Group – 12/11/12 - \$5000
- (x) Cong. Givas Pinchas - 12/20/12 - \$500
- (y) Hamilton East Man Capital LLC – 3/1/13 - \$6,000
- (z) Steve Hymes

20. Upon information and belief, each of Wolcowitz and Wertzberger caused Axxessa's bank account at Investors Bank to pay personal and non-business expenses via debit transactions, including but not limited to the following:

- (a) NYC Parking Fine – 2/8/12 - \$395
- (b) Shoprite – 2/13/12 - \$75
- (c) Liberty Science – 2/21/12 - \$70.25
- (d) APL*Apple Itunes – 3/3/12 - \$40.00
- (e) Lowes – 4/2/12 - \$481.60
- (f) Macys.com – 4/9/12 - \$315.65
- (g) NYC Parking Fine – 5/8/12 - \$278.00
- (h) NYC Parking Fine – 5/30/12 - \$469.00
- (i) Stone and Bath G Brooklyn – 6/27/12 - \$950.00
- (j) Stone and Bath G Brooklyn – 6/27/12 - \$1,000.00
- (k) APL*Apple Itunes – 6/29/12 - \$3.26
- (l) NYC Parking Fine – 7/31/12 - \$990.00
- (m) Century Twenty O Brooklyn – 8/7/12 - \$25.88
- (n) Century Twenty O Brooklyn – 8/7/12 - \$21.74
- (o) Liquor City USA – 9/3/12 - \$16.31
- (p) Cigar Aficion – 9/3/12 - \$18.16

- (q) Park East Synagogue – 9/4/12 - \$150.00
- (r) NYSDMV-TRFC-VILN – 9/24/12 - \$130.00
- (s) NYC Parking Fine – 10/19/12 - \$124.00
- (t) NYC Parking Fine – 11/8/12 - \$117.00
- (u) Lowes – 11/27/12 - \$115.30
- (v) TIV*TIVO Service – 12/5/12 - \$14.10
- (w) Congregation Keh – 1/2/13 - \$50.00
- (x) TIV*TIVO Service – 1/5/13 - \$14.10
- (y) Singer Clothing – 1/8/13 - \$198.00
- (z) NYC Parking Fine – 1/8/13 - \$348.00
- (aa) The Wine Cave – 1/7/13 - \$1,193.31
- (bb) APL*Apple Itunes – 1/17/13 - \$1.08
- (cc) Ezras Cholim Yad Brooklyn – 2/5/13 - \$500.00
- (dd) TIV*TIVO Service – 2/5/13 - \$14.10
- (ee) TIV*TIVO Service – 3/5/13 - \$14.10
- (ff) The Wine Cave – 3/13/13 - \$1,000.00
- (gg) The Wine Cave – 3/14/13 - \$1,140.87
- (hh) CVS Pharmacy -3/18/13 - \$19.36
- (ii) TIV*TIVO Service -4/6/13 - \$14.10
- (jj) TIV*TIVO Service – 5/9/13 - \$14.10

21. On or about November 11, 2011, Wolcowitz directed the attorney for Axxessa to wire \$24,000 to Talmu, as well as \$52,000 to Wolcowitz and \$34,000 to Wertzberger.

22. The records of the New York State Department of State indicate that Joel

Wertzberger is the designated person to whom service of process on Hamilton East Man LLC will be forwarded.

23. Upon information and belief, Wertzberger signed the check payable to Hamilton East Man Capital LLC in two capacities, i.e., as authorized signatory for Axxessa and for Hamilton East Man Capital LLC.

24. In addition, Axxessa made payments on the policy underlying the contract while not paying Opulen. Thus, Axxessa made paid "Steve Hymes" \$10,000 by check dated January 18, 2013, for "Gary Wilder Comp." Axxessa issued another check payable to Steve Hymes in the amount of \$2,000 on February 22, 2013.

25. Another entity payee listed above, Joyland Group, is, upon information and belief, dominated and controlled by Wertzberger.

26. The New York State Department of State records list the address to which service of process on Joyland Group LLC will be forwarded as 1166 59th Street, Brooklyn, New York 11219 – the same address listed on the New York State Department of State website for Axxessa, the same address used by Wertzberger and Wolcowitz for Axxessa in opening the bank accounts for Axxessa at Investors Bank, and the same address listed as Wertzberger's residence in opening the Axxessa bank accounts at Investors Bank.

27. Wertzberger used a "Joyland" email address in connection with his activities on behalf of Axxessa.

28. Wertzberger and Wolcowitz are each alter egos of Axxessa and, as such, are liable for the debts of Axxessa.

29. At all times, Wertzberger and Wolcowitz, jointly and severally, exercised complete domination and control of the operations, management and financial affairs of Axxessa.

30. Upon information and belief, Wertzberger and Wolcowitz, jointly and severally, used their power and control over Axxessa to further their personal interests, and have commingled the assets and economic activity of Axxessa with their other entities and with their personal affairs.

31. Upon information and belief, in conducting the activities and affairs of Axxessa, Wertzberger and Wolcowitz, jointly and severally, have disregarded required corporate formalities.

32. Upon information and belief, Wolcowitz and Wertzberger have not adequately capitalized Axxessa, leaving Axxessa without sufficient assets to meet its debts and obligations, including its debts and obligations to Half Brothers, as assignee of Opulen.

33. By using Axxessa's assets for their own personal purposes, Wertzberger and Wolcowitz, jointly and severally, misused the entity form to place Axxessa's assets beyond the reach of Axxessa's creditors. Through misuse of Axxessa's entity form, Wertzberger and Wolcowitz, jointly and severally, have wronged Plaintiff by hiding assets from Plaintiff and leaving Axxessa with insufficient funds to pay Plaintiff amounts owed by Axxessa.

34. Wertzberger and Wolcowitz used their control over Axxessa to commit wrongs and dishonest and unjust acts in contravention of Opulen's and now Plaintiff's legal rights, proximately causing Plaintiff injury.

35. Accordingly, Wertzberger and Wolcowitz are each jointly and severally liable for the debts of Axxessa to Plaintiff.

WHEREFORE, Plaintiff, HALF BROTHERS LLC, demands trial by jury and judgment against Defendants, JOEL WERTZBERGER and ARON J. WOLCOWITZ, as follows:

(a) on the First Cause of Action, in the amount of not less than the Judgment against Axxessa, together with all post-judgment interest;

(b) interest, reasonable attorney's fees as permitted by law, costs, and disbursements, and

(c) for such other and further relief as this Court deems just and proper.

DATED: Melville, New York March 3, 2014

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